



{In Archive} FYI on a ECA letter from Sen Begich (Alaska)

Josh Lewis to: Lori Stewart, Byron Bunker

09/29/2009 01:06 PM

Cc: Patricia Haman

Archive:

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Request to delay implementation of the ECA and extend the public comment period. This will be coming through CMS shortly...

Josh

----- Forwarded by Josh Lewis/DC/USEPA/US on 09/29/2009 01:04 PM -----

From: Joyce Frank/DC/USEPA/US  
To: Cassaundra Eades/DC/USEPA/US@EPA, Kathy Mims/DC/USEPA/US@EPA  
Cc: lewis.josh@epa.gov, KevinJ Bailey/DC/USEPA/US  
Date: 09/29/2009 09:51 AM  
Subject: Fw: EPA-HQ-OAR-2007-0121

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Kathy/Sandy: Please enter this into CMS and assign to OAR. Thanks. Joyce

Joyce Frank  
Principal Deputy Associate Administrator  
Office of Congressional and Intergovernmental Relations  
U.S. Environmental Protection Agency  
(202) 564-3699

----- Forwarded by Joyce Frank/DC/USEPA/US on 09/29/2009 09:50 AM -----

From: "Feldman, James (Begich)" <James\_Feldman@begich.senate.gov>  
To: Group A-AND-R-DOCKET@EPA, Joyce Frank/DC/USEPA/US@EPA  
Date: 09/28/2009 05:33 PM  
Subject: EPA-HQ-OAR-2007-0121

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Joyce,

Please see the attached letter from Senator Begich to Administrator Jackson. A hard copy is in the mail.

Sincerely,  
James Feldman

James Feldman  
Office of Senator Mark Begich



Begich ECA Letter.pdf

*Exfile*

MARK BEGICH  
ALASKA

COMMITTEE ON ARMED SERVICES

COMMITTEE ON  
COMMERCE, SCIENCE, AND TRANSPORTATION

COMMITTEE ON VETERANS' AFFAIRS

SUITE SR-144  
RUSSELL BUILDING  
WASHINGTON, DC 20510  
(202) 224-3034

## United States Senate

WASHINGTON, DC 20510

September 28, 2009

The Honorable Lisa Jackson  
Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Re: Docket ID No. EPA-HQ-OAR-2007-0121**

Dear Administrator Jackson,

I respectfully ask you delay implementation of the proposed rule establishing an Emission Control Area (ECA) in Alaska until the appropriate science has been completed. It is my understanding the rule is based on data collected in the lower 48 states and Canada. A delay would provide an opportunity to properly collect data and study the environmental, health, and economic impacts of such a rule in Alaska.

The cruise ship industry is of vital importance to Alaska's economy. Over a million visitors came to Alaska via cruise ship last summer, and nearly 14 percent of all employment in our state is directly tied to the tourism industry. Given this year's tourism season has demonstrated the price sensitivity of American and foreign consumers in the midst of the economic downturn, it is estimated Alaska will have approximately 140,000 less cruise ship passengers in 2010. I am concerned the imposition of a rule developed without consideration of environmental and economic impacts in Alaska might have the unintended consequence of exacerbating this decline.

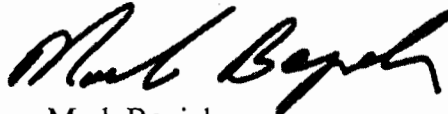
I do recognize carbon emissions contribute to climate change and a well balanced approach is necessary to address these challenges. Vessel emissions have been an issue receiving attention in Southeast Alaska in the past and have previously been monitored by the State of Alaska Department of Environmental Conservation. Additionally, local governments have instituted creative solutions to reduce emissions. For example, the City and Borough of Juneau has collaborated with the cruise ship industry to provide renewable hydroelectric shore power for vessels, removing the need for ships to run their engines to provide power when docked.

At a minimum, I respectfully request you extend the comment period for this proposed rule. Alaskans have only recently become aware of this issue, and I believe it would be imprudent to cut off comments until the public has a full understanding and opportunity to be heard on this important issue.

Administrator Jackson  
September 28, 2009  
Page 2

I have greatly appreciated your willingness to work with me on issues important to Alaska during the first few months of your tenure. Thank you for your consideration of this request, and please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Begich". The signature is fluid and cursive, with the first name "Mark" and last name "Begich" clearly distinguishable.

Mark Begich  
U.S. Senator

MARK BEGICH  
ALASKA

COMMITTEE ON ARMED SERVICES

COMMITTEE ON  
COMMERCE, SCIENCE, AND TRANSPORTATION

COMMITTEE ON VETERANS' AFFAIRS

AL-09-001-4690

SUITE SR-144  
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## United States Senate

WASHINGTON, DC 20510

September 28, 2009

The Honorable Lisa Jackson  
Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

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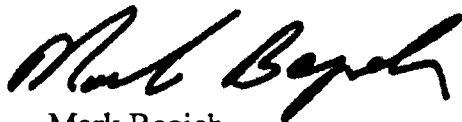
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Administrator Jackson  
September 28, 2009  
Page 2

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A handwritten signature in black ink, appearing to read "Mark Begich". The signature is fluid and cursive, with the first name "Mark" and last name "Begich" clearly distinguishable.

Mark Begich  
U.S. Senator



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

**NOV 02 2009**

OFFICE OF  
AIR AND RADIATION

The Honorable Mark Begich  
United States Senate  
Washington, D. C. 20510

Dear Senator Begich:

Thank you for your letter of September 28, 2009, urging the U.S. Environmental Protection Agency (EPA) to conduct additional analyses before including Alaska in the North American Emission Control Area (ECA), which was proposed to the International Maritime Organization's Marine Environment Protection Committee (MEPC) last July. We appreciate the opportunity to address your concerns about the degree of public notice that was provided, as well as the possible impacts of such a proposal on the environment and the economy of Alaska.

As you may be aware, the large diesel engines on ships are significant contributors to our national emissions inventory. The inventory for the proposed ECA includes detailed emissions information for ships operating in Alaskan waters. In coordination with the Alaska Department of Environmental Conservation and the Government of Canada, EPA found that there are substantial ship emissions in the waters off Southcentral and Southeast Alaska, and a high probability that those emissions reach land in an area where most of the State's population resides.

In developing the ECA proposal, EPA consulted with stakeholders, including representatives from the shipping industry, ports, master mariners, environmental interests and representatives from state and provincial governments. EPA began conducting outreach far in advance of our proposal to the International Maritime Organization. In the Advance Notice of Proposed Rulemaking (ANPRM) for Control of Emissions from New Marine Compression Engines, published on December 7, 2007, EPA outlined an approach to regulating emissions from both new and existing vessels using a framework that aligns with MARPOL Annex VI, including the provisions for Emission Control Areas. During the comment period for that ANPRM, EPA received many substantive comments on EPA's coordinated strategy for ocean-going vessels, including comments on adopting internationally harmonized standards that would apply in U.S. coastal waters.

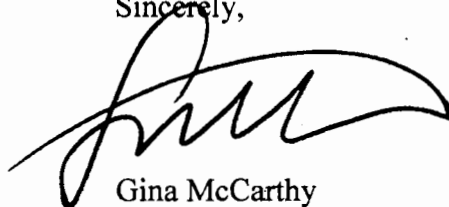
With these standards, EPA is striving to minimize the impact on the shipping community, while achieving needed environmental protection. The costs of implementing and complying with the coordinated strategy are expected to be small in comparison to the health and welfare benefits. As described in our August 28 Notice of Proposed Rulemaking, the estimated cost of implementing the coordinated strategy is approximately \$1.85 billion in 2020, increasing to \$3.11 billion in 2030. By 2030, the coordinated strategy is expected to prevent as many as

33,000 premature deaths annually and yield up to \$280 billion in monetized health benefits.

The amendment process for MARPOL Annex VI provides that Parties who have ratified the treaty will vote to adopt the North American ECA at MEPC this coming March. Given the lead time specified in the regulations, an ECA approved at MEPC could be expected to enter into force no earlier than August 2012. During that period of well over two years, EPA is committed to working with the Government of Alaska and regional/local businesses to assist with implementation in any way possible.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina McCarthy', with a large, sweeping flourish at the end.

Gina McCarthy  
Assistant Administrator



**{In Archive} EPA's reconsideration of the "Johnson Memo"**

Patricia Haman to:

03/29/2010 11:39 AM

Co: Josh Lewis

Sam\_Petsonk, liz\_hermesen, "Albritton, Jason (EPW)", "Brown,  
Bcc: Tristan (Klobuchar)", "Ordal, Paul (EPW)", Adam\_Tarr,  
Andrew\_Wallace, ben\_dunham, Ben\_Rosenbaum, Bettina\_Poirier,

Archive. This message is being viewed in an archive.

Good Morning: The EPA completed its reconsideration of a December 18, 2008 memorandum entitled "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." (Commonly referred to as the "Johnson memo.") No stationary source requirements will apply until 2011.

Below is a draft of our press release which will go out around noon today.



This fact sheet is very informative: [final Reconsideration fact sheet.pdf](#)

If you scroll down in the fact sheet, there is a link which will go live after the press release is put out.

Please call if you have any questions.

Pat  
Patricia Haman  
Office of Congressional and Intergovernmental Relations  
202-564-2806

-----  
CONTACT:  
Cathy Milbourn  
[milbourn.cathy@epa.gov](mailto:milbourn.cathy@epa.gov)  
202-564-7849  
202-564-4355

FOR IMMEDIATE RELEASE  
March 23, 2010

**EPA Formally Announces Phase-in of Clean Air Act Permitting for Greenhouse Gases**

Agency reiterates no stationary source requirements until 2011

WASHINGTON - Under a final decision issued today by the U.S. Environmental Protection Agency (EPA) no stationary sources will be required to get Clean Air Act permits that cover greenhouse gases (GHGs) before January 2011. EPA has pledged to take sensible steps to address the billions of tons of greenhouse gas pollution that threaten Americans' health and welfare, and is providing time for large industrial facilities and state governments to put in place cost-effective, innovative technologies to control and reduce carbon pollution. Today's announcement is the first step in EPA's phased in approach to addressing GHG emissions laid out by Administrator Jackson earlier this month.

"This is a common sense plan for phasing in the protections of the Clean Air Act. It gives large facilities the time they need to innovate, governments the time to prepare to cut greenhouse gases and it ensures that we don't push this problem off to our children and grandchildren," said EPA Administrator Lisa P. Jackson. "With a clear process in place, it's now time for American innovators and entrepreneurs to go to



work and lead us into the clean energy economy of the future.”

Today's action determines that Clean Air Act construction and operating permit requirements for the largest emitting facilities will begin when the first national rule controlling GHGs takes effect. If finalized as proposed, the rule limiting GHG emissions for cars and light trucks would trigger these requirements in January 2011 - the earliest model year 2012 vehicles meeting the standards can be sold in the United States. The agency expects to issue final vehicle GHG standards shortly.

EPA has committed to focusing its GHG permitting requirements on the largest sources. The agency will make a decision later this spring on the amount of GHGs facilities can emit before having to include limits for these emissions in their permits.

Today's action is the final step in EPA's reconsideration of the December 18, 2008 memorandum entitled "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." The final action clarifies when GHGs and other pollutants are covered under Clean Air Act permitting programs.

More information: <http://www.epa.gov/nsr/guidance.html>

## **Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Prevention of Significant Deterioration Program**

### **Fact Sheet**

#### **ACTION**

- On March 29, 2010, the U.S. Environmental Protection Agency (EPA) completed its reconsideration of a December 18, 2008 memorandum entitled “EPA’s Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program.” A PSD permit is required before a new industrial facility can be built or an existing facility can expand in a way that significantly increases emissions.
- This interpretive memo, from then-EPA Administrator Stephen L. Johnson to the EPA Regional Administrators, addressed when the Clean Air Act (CAA) PSD program would cover a pollutant, including greenhouse gases (GHGs) such as carbon dioxide (CO<sub>2</sub>).
- The memo indicated that the PSD Permitting Program would apply to pollutants that are subject to either a provision in the CAA or a regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant. The memo further explained that pollutants for which EPA regulations only require monitoring or reporting, such as the provisions for CO<sub>2</sub> in the Acid Rain Program, are not subject to PSD permitting.
- In its October 7, 2009 reconsideration proposal, EPA requested comment on several interpretations of when a pollutant is “subject to regulation” under the CAA for the purposes of triggering the requirements to get a PSD permit, including:
  - A final EPA rule requiring control of emissions of a pollutant;
  - Inclusion of regulatory requirements for a pollutant in an EPA-approved State Implementation Plan;
  - An EPA rule requiring monitoring or reporting of emissions of a pollutant;
  - An “Endangerment Finding” for a pollutant under the CAA; and
  - EPA’s granting of a Clean Air Act section 209 waiver, such as the “California Waiver.”
- After carefully reviewing comments on the proposal, EPA is taking the following actions:
  - Affirming our existing position that PSD permitting is not triggered for a pollutant such as GHGs until a final nationwide rule requires actual control of emissions of the pollutant.
  - Interpreting that PSD permitting requirements are triggered when the control requirement of the nationwide rule “takes effect” – rather than at signature,

- Explaining that for GHGs, "takes effect" means when the first national rule regulating controlling GHGs takes effect. If finalized as proposed, the rule limiting GHG emissions for cars and light trucks would trigger these requirements in January 2011 -- the earliest 2012 vehicles meeting the standards can be sold in the United States.  
Explaining that this interpretation of "subject to regulation" applies for Title V permitting as well.
- Confirming that there is no "grandfathering" of pending permit applications. If a permit is issued after Jan 2, 2011 (the earliest possible "takes effect" date for the LDV rule) it will have to address GHG emissions, even if applications were filed (and determined complete) prior to that date.
- Reinforcing the fact that new and modified large stationary sources must already consider energy efficiency when selecting the best available control technology (BACT) for non-GHG pollutants. Greater energy efficiency results in lower GHG emissions.

#### **LEADING UP TO TODAY'S ACTION**

- On April 2, 2007, the Supreme Court found that GHGs, including carbon dioxide, are air pollutants covered by the CAA. *Massachusetts v. EPA*, 549 U.S. 497 (2007). The case arose from EPA's denial of a petition for rulemaking filed by environmental, renewable energy, and other organizations requesting that EPA control emissions of GHGs from new motor vehicles and new motor vehicle engines under section 202(a) of the CAA.
- The Court found that the Administrator was required to determine whether or not emissions of GHGs from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision. This determination is known as an "endangerment finding."
- On August 30, 2007, EPA issued a PSD permit to Deseret Power Electric Cooperative, authorizing it to construct a new waste-coal-fired electric generating unit near its existing Bonanza Power Plant, in Bonanza, Utah. The permit did not include emissions control requirements known as best available control technology (BACT) limits for CO<sub>2</sub>. EPA acknowledged the *Massachusetts* decision but found that decision alone did not require PSD permits to include limits on CO<sub>2</sub> emissions.
- Sierra Club challenged the Deseret permit. On November 13, 2008, the Environmental Appeals Board (EAB) remanded the permit to EPA to reconsider "whether or not to impose a CO<sub>2</sub> BACT limit in light of the 'subject to regulation' definition under the CAA." The remand was based in part on EAB's finding that

- On December 18, 2008, then-Administrator Johnson issued a memorandum that established an interpretation of this regulatory phrase.
- On December 31, 2008, Sierra Club and 14 other environmental, renewable energy, and citizen organizations petitioned EPA to reconsider the PSD interpretative memo issued by then-Administrator Johnson.
- On February 17, 2009, Administrator Jackson granted the Petition for Reconsideration of the December 18, 2008 memorandum and indicated that EPA would utilize a rulemaking process to solicit comment on Administrator Johnson's memorandum and related considerations reflected in the opinion of EPA's environmental Appeals Board in the *Deseret* decision.
- On April 17, 2009, EPA proposed to find under the CAA that greenhouse gases in the atmosphere endanger the public health and welfare of current and future generations. The Agency also proposed to find that find that the combined emissions of GHGs from new motor vehicles and new motor vehicle engines are contributing to this mix of greenhouse gases in the atmosphere, and thus the climate change problem.
- On September 15, 2009, EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) issued a joint proposal to establish a national program consisting of new standards for model year 2012 through 2016 light-duty vehicles that will reduce greenhouse gas emissions and improve fuel economy. EPA expects to complete this rule by the end of March 2010.
- On September 30, 2009, EPA proposed new thresholds for GHG emissions that define which sources would need to obtain Clean Air Act permits under the New Source Review and Title V operating permits programs. The proposed thresholds would tailor these permit programs to limit which facilities would be required to obtain permits. EPA intends to complete this rule in the near future.
- On September 30, 2009, EPA issued its reconsideration proposal in this action, as discussed above.
- On December 7, 2009, EPA finalized its finding under Clean Air Act that greenhouse gases in the atmosphere endanger both the public health and the environment for current and future generations. The agency also found that the combined emissions of greenhouse gases from new motor vehicles are contributing to the buildup of greenhouse gases in the atmosphere, and thus to the climate change problem. This action provides the legal basis for the final emissions requirements for new cars and trucks.

## **BACKGROUND**

- Congress established the NSR program as part of the 1977 Clean Air Act Amendments and modified it in the 1990 Amendments. NSR is a preconstruction permitting program that serves two important purposes:
  1. Ensures the maintenance of air quality standards or, where there are not air quality standards, it ensures that air quality does not significantly worsen when factories, industrial boilers, and power plants are modified or added. In areas that do not meet the national ambient air quality standards, NSR assures that new emissions do not slow progress toward cleaner air. In areas that meet the standards, especially pristine areas like national parks, NSR assures that new emissions fall within air quality standards.
  2. Ensures that state-of-the-art control technology is installed at new plants or at existing plants that are undergoing a major modification.

## **FOR MORE INFORMATION**

- To download a copy of this notice, go to EPA's Web site at: <http://www.epa.gov/nsr>.
- Today's final action and other background information are also available electronically at <http://www.regulations.gov>, EPA's electronic public docket and comment system. The docket number for this action is Docket ID No. EPA-HQ-OAR-2009-0597.
- For more information on the final rule, contact Dave Svendsgaard at (919) 541-2380 or [svendsgaard.dave@epa.gov](mailto:svendsgaard.dave@epa.gov).

AL-10-000-2781

# United States Senate

WASHINGTON, D.C. 20510

February 19, 2010

The Honorable Lisa P. Jackson  
Administrator  
Environmental Protection Agency  
Washington, DC 20460

Dear Administrator Jackson:

We write with serious economic and energy security concerns relating to the potential regulation of greenhouse gases (GHGs) from stationary sources under the Clean Air Act. Ill-timed or imprudent regulation of GHGs may squander critical opportunities for our nation, impeding the investment necessary to create jobs and position our nation to develop and produce its own clean energy. We need a clear understanding of how you view your agency's responsibilities and the processes by which you intend to carry them out in order to represent the workers, industries, taxpayers, and economic interests of our states.

We understand that in order to comply with the 2007 Supreme Court decision in *Massachusetts v. EPA*, your agency issued a determination that greenhouse gases may reasonably be anticipated to endanger public health and welfare. We also understand that this determination, also known as an endangerment finding, is the first step in the rulemaking process for regulation of greenhouse gas emissions from new motor vehicles, which was the subject of *Massachusetts v. EPA*, and we support moving forward with a single national standard for this purpose.

Nevertheless, we remain concerned about the possible impacts on American workers and businesses in a number of industrial sectors, along with the farmers, miners, and small business owners who could be affected as your agency moves beyond regulations for vehicle greenhouse gas emissions to implement regulations to curtail GHG pollution from stationary sources. We understand that with the endangerment finding in place, the EPA has the obligation to regulate GHG emissions from stationary sources under the Act's prevention of significant deterioration (PSD) provisions related to existing operating permit programs. We have a responsibility to the workers and industries in our states to address both your agency's timetable for the implementation of these stationary source regulations, and what you intend the exact requirements for businesses to be.

As you are undoubtedly aware, there are legislative efforts in the House and Senate seeking to disallow further agency action based on the endangerment finding. As we consider those legislative initiatives and the larger issues of economic stability and carbon regulation, we need clarification from you on a number of key questions to provide certainty to stakeholders in our states who out of necessity must make long-term capital investment decisions. Putting these investments at risk would further destabilize the economy. Therefore, we request that you promptly respond to the following information requests and questions to assist us in taking the proper course of action for our constituents:

- 1) Given the serious nature of potential regulation and businesses' need for certainty, please provide us with a precise understanding of when you plan to proceed with any regulation of greenhouse gas emissions from stationary sources, and when and how the U.S. Congress would be able to review and address these regulations.
- 2) Is it your reading of Senate Joint Resolution 26 (introduced on January 21, 2010) that it would essentially nullify EPA's endangerment finding? If so, how would this affect EPA's ability to regulate both mobile sources as well as stationary sources?
- 3) Please describe what EPA intends to accomplish with the "tailoring rule," which you announced on September 30, 2009. How will this rule affect your implementation of the Clean Air Act on stationary sources of emissions? Do smaller-scale emitters of these gases, from family farms to neighborhood dry cleaners to hospital power plants, need to be concerned with these regulations? What is your assessment of the likelihood of the tailoring rule surviving already announced legal challenges? Currently, PSD regulations are applied to fewer than 400 facilities per year for pollutants such as ozone. How many facilities would be required to obtain permits under GHG regulation under the Clean Air Act?
- 4) In light of the multiple legislative options before Congress related to EPA's endangerment finding, what is EPA's plan to respond to concerns these proposals raise? How would passage of various resolutions affect the agency's ongoing efforts to engage in preparatory work designed to help policymakers understand how future comprehensive climate and energy legislation would affect potentially regulated entities?
- 5) Large electric generators using domestically produced coal and natural gas are uncertain about potential "Best Available Control Technology" or "BACT" standards for carbon dioxide (CO<sub>2</sub>). What does EPA expect coal and natural gas plant operators to do if there is no standard? What process will you use to determine such standards and the range of options for such facilities given the pre-commercial standing of current CO<sub>2</sub> abatement technologies such as carbon capture and storage (CCS)?
- 6) There is genuine concern from the domestic oil and gas industries, from entities operating at the wellhead to pipeline operators, processing plants, and refiners, that they will be severely disadvantaged in the world marketplace by stationary source regulations. Can you characterize how these regulations will translate into costs for these industries? Has your agency analyzed or will you consider the impacts on competitiveness that these costs could have on these industries?
- 7) Comprehensive clean energy legislation must ensure a robust US manufacturing base for clean energy production, invest in US research and development of new clean energy technologies, and mitigate costs to energy-intensive and trade-exposed industries. If EPA regulates GHGs for stationary sources, what are the direct and indirect cost implications for industrial sources of Clean Air Act prevention of significant deterioration (PSD) regulations? Has your agency analyzed or will you consider so-called "carbon leakage" and the competitiveness impacts of these costs on these industries? Will your agency publish impact analyses on these critical issues prior to implementing the regulation?
- 8) How would a resolution striking down the endangerment finding affect EPA's ability to provide resources or technical expertise intended to address and adapt to climate change effects, including,

but not limited to: Efforts to analyze climate and weather variability and its effects on agriculture, fisheries, species habitats, and coastal development among communities along the Gulf Coast and elsewhere; research programs related to climate change effects on mountain snowpack throughout the Pacific Coast and Mountain West regions; and the infrastructure, energy, and socioeconomic implications of relocating Alaska communities due to historically unprecedented coastal erosion?

The President and you have been explicit in calling on Congress to pass comprehensive legislation that would enhance our nation's energy and climate security. We strongly believe this is ultimately Congress' responsibility, and if done properly, will create jobs, spur new clean energy industries, and greatly advance the goal of U.S. energy independence. If done improperly, these opportunities could be lost.

Thank you for your attention to this matter. We look forward to your prompt response.

Jay Byrnes

Mark Begich

Sumner Brown

Caulder

Bob Murray, Jr.

Robert Byrd

Colin McCaskey

My Baines





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 22 2010

THE ADMINISTRATOR

The Honorable Mark P. Begich  
United States Senate  
Washington, D.C. 20510

Dear Senator Begich:

Thank you for your letter of February 19, 2010, concerning the Environmental Protection Agency's (EPA's) work to comply with the Supreme Court's decision in *Massachusetts v. EPA* while providing a manageable path forward for businesses and state governments. I share your goals of ensuring economic recovery at this critical time and of addressing greenhouse-gas emissions in sensible ways that are consistent with the call for comprehensive energy and climate legislation. My full response to your letter appears below and in the enclosed document.

Many of the comments and questions you offer are similar to ones that EPA received during recent public comment periods. As EPA staff works to respond to those comments, I am happy to share information with you here in order to answer the questions in your letter as completely as I can. The decision-making process has moved far enough along that I can make several central points based on modifications I expect to make in finalizing EPA's previous proposals:

- The United States Supreme Court held three years ago in *Massachusetts v. EPA* that greenhouse gases are air pollution and are subject to regulation under the Clean Air Act. EPA must follow the Supreme Court's holding, as you recognize in your letter.
- By April of this year, I expect to take actions to ensure that no stationary source will be required to get a Clean Air Act permit to cover its greenhouse gas emissions in calendar year 2010.
- Based on those anticipated actions, I expect that EPA will phase-in permit requirements and regulation of greenhouse gases for large stationary sources beginning in calendar year 2011. In the first half of 2011, only those facilities that already must apply for Clean Air Act permits as a result of their non-greenhouse gas emissions will need to address their greenhouse gas emissions in their permit applications.
- Further, I am expecting that greenhouse gas emissions from other large sources will phase in starting in the latter half of 2011. Between the latter half of 2011 and 2013, I expect that the threshold for permitting will be substantially higher than the 25,000-ton limit that EPA originally proposed. In any event, EPA does not intend to subject the smallest sources to Clean Air Act permitting for greenhouse-gas emissions any sooner than 2016.

- You asked in your letter what the result would be if Senator Lisa Murkowski's resolution of disapproval of EPA's endangerment finding were enacted. One result would be to prevent EPA from issuing its greenhouse gas standard for light-duty vehicles, because the endangerment finding is a legal prerequisite of that standard. The impacts of that result would be significant. In particular, it would undo an historic agreement among states, automakers, the federal government, and other stakeholders. California and at least thirteen other states that have adopted California's emissions standards likely would enforce those standards within their jurisdictions,<sup>1</sup> leaving the automobile industry without the explicit nationwide uniformity that it has described as important to its business.<sup>2</sup>

## Background

Three years ago, the Supreme Court held in *Massachusetts v. EPA* that the term "air pollutant" in the Clean Air Act includes greenhouse gases.<sup>3</sup> The Court also held that the Act requires EPA to consider the science of climate change meaningfully in determining whether greenhouse-gas pollution endangers public health or welfare.<sup>4</sup> As a result of the Court's decision, EPA became obligated to treat greenhouse-gas emissions as air pollution under the Clean Air Act and to engage with the best available science in determining whether those emissions endanger Americans' health or welfare. After EPA staff conducted a comprehensive survey of the soundest available science and carefully reviewed hundreds of thousands of public comments, I determined last December that greenhouse-gas emissions do endanger Americans' health and welfare.<sup>5</sup>

As you know, I am not alone in having reached that conclusion. The U.S. Global Change Research Program, which consists of thirteen federal departments – including the National Science Foundation, the Department of Health and Human Services, and the Departments of Commerce, Agriculture, Defense, Energy, and the Interior – found last June that risks to human health will increase as a result of human-induced global warming.<sup>6</sup> The U.S. Senate itself has twice passed, on a bipartisan basis, a resolution finding that greenhouse-gas accumulation from human activity poses a substantial risk of increased frequency and severity of floods and droughts.<sup>7</sup>

EPA's endangerment finding obligates the agency, under Section 202(a) of the Clean Air Act, to issue greenhouse-gas emissions standards for motor vehicles.<sup>8</sup> EPA will begin to discharge that

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<sup>1</sup> <http://www.epa.gov/otaq/climate/regulations/air-resources-board.pdf>.

<sup>2</sup> See *Patchwork Proven*, National Automobile Dealers Association (January 2009).

<sup>3</sup> 549 U.S. 497, 528-29, 532-33 (2007).

<sup>4</sup> *Id.* at 534-35.

<sup>5</sup> 74 Fed. Reg. 66495, *et seq.* (December 15, 2009).

<sup>6</sup> <http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf>

<sup>7</sup> See Energy Policy Act of 2005; Energy Independence and Security Act of 2007.

<sup>8</sup> See Clean Air Act Section (202)(a)(1), 42 U.S.C. § 7521(a)(1).

duty late next month, by issuing greenhouse-gas emissions standards for Model Year 2012-2016 light-duty motor vehicles.<sup>9</sup>

At the same time that EPA issues its light-duty-vehicle emissions standard, the Department of Transportation will issue a rule raising the existing fuel-economy standards for the same vehicles.<sup>10</sup> Together, the EPA and DOT standards will reduce the lifetime oil consumption of the affected vehicles by 1.8 billion barrels while eliminating 950 million metric tons of greenhouse-gas pollution.<sup>11</sup> The government of California has agreed to recognize vehicles that comply with the EPA rule as complying with the state's greenhouse-gas emissions standard. As a result, the automakers will be able to operate with the nation-wide regulatory uniformity that they have sought.

The implementation of EPA's light-duty vehicle standard will make greenhouse-gas emissions subject to regulation under the Clean Air Act for the first time. Under the Act's text, air pollutants that are subject to regulation under the statute are subject to the Act's "prevention of significant deterioration" and operating-permit provisions for stationary sources.<sup>12</sup>

Mindful of that legal consequence, and in order to provide clarity for states and businesses, EPA has been working to complete two rulemakings. The agency has received many thoughtful comments on those two rulemakings – from citizens, States, localities, industry representatives, and environmental groups. The agency's upcoming actions will reflect and incorporate valuable information and constructive suggestions that EPA received during the public comment periods, and thus will improve substantially upon the agency's initial proposals.

The first action will conclude EPA's reconsideration of a memorandum that former EPA Administrator Stephen Johnson issued in 2008. I anticipate that the final action on reconsideration will explain that greenhouse-gas emissions will become "subject to regulation" under the Clean Air Act, such as to make them a part of the Act's stationary-source permitting programs, in January of 2011, when Model Year 2012 light-duty vehicles will need to comply with EPA's greenhouse-gas emissions standard. As a result of that final action, no facility will need to address greenhouse-gas emissions in Clean Air Act permitting before 2011.

The second action will promulgate what has become known as the tailoring rule. I describe that action in detail at the outset of this letter.

I have already described the impact of enactment of Senator Lisa Murkowski's resolution of disapproval of EPA's endangerment finding on the light-duty vehicle standard and the historic agreement among states, automakers, the federal government, and other stakeholders. Moreover, a vote to vitiate the greenhouse-gas endangerment finding would be viewed as a vote to reject the

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<sup>9</sup> See 74 Fed. Reg. 49453, *et seq.* (September 28, 2009).

<sup>10</sup> See *id.*

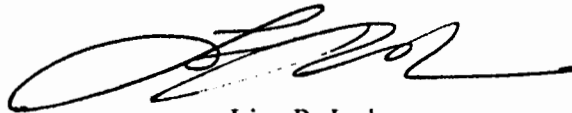
<sup>11</sup> <http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/522d0a809f6b7f9c8525763200562534!OpenDocument>

<sup>12</sup> See, e.g., Clean Air Act Section 169(3), 42 U.S.C. § 7479(3) ("each pollutant subject to regulation under this chapter").

scientific work of the thirteen U.S. government departments that contribute to the U.S. Global Change Research Program. It also would be viewed by many as a vote to move the United States to a position behind that of China on the issue of climate change, and more in line with the position of Saudi Arabia.

Attached, please find responses to those of your questions that are not addressed above. Thank you again for your letter. I appreciate this opportunity to update you on EPA's work to comply with the Supreme Court's decision in *Massachusetts v. EPA* while providing a manageable path forward for businesses and state governments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa P. Jackson', with a stylized, flowing script.

Lisa P. Jackson

Enclosure

**What is your assessment of the likelihood of the tailoring rule surviving already announced legal challenges?**

EPA would not have issued its initial tailoring rule proposal if I did not believe that it was lawful. Oddly, certain advocacy organizations that purport to speak for businesses are the only ones who have threatened to challenge the tailoring rule in court. My assessment is that those challenges, if they are filed, will fail. If my assessment were otherwise, I would not promulgate the tailoring rule.

**Currently, PSD regulations are applied to fewer than 400 facilities per year for pollutants such as ozone. How many facilities would be required to obtain permits under GHG regulation under the Clean Air Act?**

None in 2010. For the first half of 2011, fewer than 400, because only facilities undergoing permitting for other pollutants would need to address greenhouse-gas emissions in permitting.

**Large electric generators using domestically produced coal and natural gas are uncertain about potential "Best Available Control Technology" or "BACT" standards for carbon dioxide (CO<sub>2</sub>). What does EPA expect coal and natural gas plant operators to do if there is no standard? What process will you use to determine such standards and the range of options for such facilities given the pre-commercial standing of current CO<sub>2</sub> abatement technologies such as carbon capture and storage (CCS)?**

EPA continues to review and analyze options for defining Best Available Control Technology (BACT) for greenhouse-gas emissions. The additional time that EPA will have before permitting requirements will take effect will enable the agency and stakeholders to consider this issue carefully and thoughtfully. EPA's goal will be to identify practical, achievable, and cost-effective strategies for minimizing emissions increases from new facilities and major modifications, recognizing the importance of those projects to the economy and job creation. The agency would of course apply the well-developed framework that exists for determining BACT for non-greenhouse-gas pollutants. One of the factors that is applied under that framework is the commercial availability of a given control technology. EPA is closely following efforts to make integrated systems for capturing, transporting, and storing CO<sub>2</sub> from coal-fueled electricity generating facilities commercially available. The agency would expect to carefully consider the state of development of this technology in considering options for BACT.

**There is genuine concern from the domestic oil and gas industries, from entities operating at the wellhead to pipeline operators, processing plants, and refiners, that they will be severely disadvantaged in the world marketplace by stationary source regulations. Can you characterize how these regulations will translate into costs for these industries? Has your agency analyzed or will you consider the impacts on competitiveness that these costs could have on these industries?**

The feasibility and commercial availability of a technology are certainly analyzed in any BACT process, and both feasibility and commercial availability are relevant to competitiveness.

**Comprehensive clean energy legislation must ensure a robust US manufacturing base for clean energy production, invest in US research and development of new clean energy technologies, and mitigate costs to energy-intensive and trade-exposed industries. If EPA regulates GHGs for stationary sources, what are the direct and indirect cost implications for industrial sources of Clean Air Act prevention of significant deterioration (PSD) regulations? Has your agency analyzed or will you consider so-called "carbon leakage" and the competitiveness impacts of these costs on these industries? Will your agency public impact analyses on these critical issues prior to implementing the regulation?**

EPA has evaluated the impacts of clean energy legislation on energy-intensive and trade-exposed industries as a part of our larger analysis of the Waxman-Markey bill (H.R. 2454) in June 2009. In addition, EPA participated in the Administration's interagency assessment of the implications of climate policy on U.S. competitiveness, titled "The Effects of H.R. 2454 on International Competitiveness and Emission Leakage in Energy-Intensive Trade-Exposed Industries" (December 2009). The report shows that under the allowance allocations made available in H.R. 2454 for the energy-intensive trade-exposed industries, the impact of comprehensive energy and climate legislation is effectively nil on the production costs for these industries. Even in the absence of the H.R. 2454 allowance allocations, these industries would bear only modest impacts on production costs (less than 3 percent increase) under an allowance price of \$20 per ton. PSD costs would be only a small factor in the cost structure of the industry. Moreover, facilities in these sectors are already subject to PSD for other pollutants.

**How would a resolution striking down the endangerment finding affect EPA's ability to provide resources or technical expertise intended to address and adapt to climate change effects, including, but not limited to: Efforts to analyze climate and weather variability and its effects on agriculture, fisheries, species habitats, and coastal development among communities along the Gulf Coast and elsewhere; research programs related to climate change effects on mountain snowpack throughout the Pacific Coast and Mountain West regions; and the infrastructure, energy, and socioeconomic implications of relocating Alaska communities due to historically unprecedented coastal erosion?**

You raise a very significant question. EPA has not had time to determine the answer. EPA would certainly try to help those threatened communities even if Congress vitiated the endangerment finding. As of this writing, however, I cannot guarantee that enactment of such a resolution would have no negative impact on those efforts.

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MICHAEL BENNET, COLORADO  
KIRSTEN GILLIBRAND, NEW YORK

ALB-001-2059  
**United States Senate**

COMMITTEE ON  
AGRICULTURE, NUTRITION, AND FORESTRY  
WASHINGTON, DC 20510-6000  
202-224-2035

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CHARLES E. GRASSLEY, IOWA  
JOHN THUNE, SOUTH DAKOTA  
JOHN CORNYN, TEXAS

July 2, 2010

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Dear Administrator Jackson:

We are very concerned about the U.S. Environmental Protection Agency's (EPA) decision in the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule to consider the emissions from biomass combustion the same as emissions from fossil fuels.

EPA's decision contradicts long-standing U.S. policy, as well as the agency's own proposed Tailoring Rule. Emissions from the combustion of biomass are not included in the Department of Energy's voluntary greenhouse gas (GHG) emissions reporting guidelines and neither are they required to be reported under EPA's GHG Reporting Rule. In the proposed Tailoring Rule, EPA proposed to calculate a source's GHG emissions based upon EPA's Inventory of U.S. GHG Emissions and Sinks. The GHG Inventory excludes biomass emissions.

We think you would agree that renewable biomass should play a more significant role in our nation's energy policy. Unfortunately, the Tailoring Rule is discouraging the responsible development and utilization of renewable biomass. It has already forced numerous biomass energy projects into limbo. We are also concerned that it will impose new, unnecessary regulations on the current use of biomass for energy.

We appreciate that EPA intends to seek further comments on how to address biomass emissions under the PSD and Title V programs. With this rule, the agency has made a fundamental change in policy with little explanation. We strongly encourage you to reconsider this decision and immediately begin the process of seeking comments on it. In addition, we appreciate Secretary of Agriculture Tom Vilsack's commitment to working with EPA on this issue and encourage you to utilize the expertise of the U.S. Department of Agriculture.

Lyndie Wicker

Susan Collins

Kay L. Hagan

Th. W.

Mike Crago

Paul Calman

John Thune

Jan E. Rinal

Bob Carey, Jr.

Jeff Sessions

←

Patty Murray

Olympia Snowe

Paul Begala

Mark R. Warner

Richard Shelby



Jeffrey A. Merkley

Jon Tester

Lee Meriwether

Caine McCasill

My Buncas

Tim Vitter

Janne Shaker

George V. Voinovich



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

**AUG 12 2010**

OFFICE OF  
AIR AND RADIATION

The Honorable Mark Begich  
United States Senate  
Washington, D.C. 20510

Dear Senator Begich:

Thank you for your July 2, 2010, letter co-signed by 24 of your colleagues, to Administrator Jackson raising concerns regarding the treatment of biomass combustion emissions in the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule (the "Tailoring Rule"). At her request, I am writing to respond.

I would like to address your comments about the treatment of biomass combustion emissions in the final Tailoring Rule and to assure you that we plan to further consider how the PSD and Title V permitting programs apply to these emissions.

As you noted, the final Tailoring Rule does not exclude biomass-derived carbon dioxide (CO<sub>2</sub>) emissions from calculations for determining PSD and Title V applicability for greenhouse gases (GHGs). To clarify a point made in your letter, the proposed Tailoring Rule also did not propose to exclude biomass emissions from the calculations for determining PSD and Title V applicability for GHGs. The proposed Tailoring Rule pointed to the U.S. Environmental Protection Agency's (EPA) Inventory of Greenhouse Gas Emissions and Sinks for guidance on how to estimate a source's GHG emissions on a CO<sub>2</sub>-equivalent basis using global warming potential (GWP) values<sup>1</sup>. This narrow reference to the use of GWP values for estimating GHG emissions was provided to offer consistent guidance on how to calculate these emissions and not as an indication, direct or implied, that biomass emissions would be excluded from permitting applicability merely by association with the national inventory.

We recognize the concerns you raise on the treatment of biomass combustion emissions for air permitting purposes. As stated in the final Tailoring Rule, we are mindful of the role that biomass or biogenic fuels and feedstocks could play in reducing anthropogenic GHG emissions, and we do not dispute observations that many federal and international rules and policies treat biogenic and fossil fuel sources of CO<sub>2</sub> emissions differently. Nevertheless, we explained that the legal basis for the Tailoring Rule, reflecting specifically the overwhelming permitting burdens that would be created under the statutory emissions thresholds, does not itself provide a rationale for excluding all emissions of CO<sub>2</sub> from combustion of a particular fuel, even a biogenic one.

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<sup>1</sup> See 74 FR 55351, under the definition for "carbon dioxide equivalent"

The fact that in the Tailoring Rule EPA did not take final action one way or another concerning such exclusion does not mean that EPA has decided that there is no basis for treating biomass combustion CO<sub>2</sub> emissions differently from fossil fuel combustion CO<sub>2</sub> emissions under the Clean Air Act's PSD and Title V programs. The Agency is committed to working with stakeholders to examine appropriate ways to treat biomass combustion emissions, and to assess the associated impacts on the development of policies and programs that recognize the potential for biomass to reduce overall GHG emissions and enhance US energy security. Accordingly, on July 9, 2010 we issued a Call for Information<sup>2</sup> asking for stakeholder input on approaches to addressing GHG emissions from bioenergy and other biogenic sources, and the underlying science that should inform these approaches. Taking into account stakeholder feedback, we will examine how we might address such emissions under the PSD and Title V programs. We will move expeditiously on this topic over the next several months. As we do so, we will continue to work with key stakeholders and partners, including the US Department of Agriculture, whose offices bring recognized expertise and critical perspectives to these issues.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Patricia Haman in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2806.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina McCarthy', with a stylized, flowing script.

Gina McCarthy  
Assistant Administrator

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<sup>2</sup> Posted online at [http://www.epa.gov/climatechange/emissions/biogenic\\_emissions.html](http://www.epa.gov/climatechange/emissions/biogenic_emissions.html)

AL-10-001-1342

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KIRSTEN GILLIBRAND, NEW YORK

## United States Senate

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RANKING REPUBLICAN MEMBER

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CHARLES E. GRASSLEY, IOWA  
JOHN THUNE, SOUTH DAKOTA  
JOHN CORNYN, TEXAS

July 2, 2010

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Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

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We think you would agree that renewable biomass should play a more significant role in our nation's energy policy. Unfortunately, the Tailoring Rule is discouraging the responsible development and utilization of renewable biomass. It has already forced numerous biomass energy projects into limbo. We are also concerned that it will impose new, unnecessary regulations on the current use of biomass for energy.

We appreciate that EPA intends to seek further comments on how to address biomass emissions under the PSD and Title V programs. With this rule, the agency has made a fundamental change in policy with little explanation. We strongly encourage you to reconsider this decision and immediately begin the process of seeking comments on it. In addition, we appreciate Secretary of Agriculture Tom Vilsack's commitment to working with EPA on this issue and encourage you to utilize the expertise of the U.S. Department of Agriculture.

Please let us know as soon as possible the agency's plans on this matter. We appreciate your attention to this important issue.

Sincerely,

Charles L. Linick      Sally Chaublin

Mark Royce      Amy Klobuchar

Sam Benmounch      Dick Lugar

Paul Udall      Mary Gaudin

Jim Johnson      Art Bond

Jim Webb      J. Hu

Lynda Wicker

Susan Collins

Kay R. Hagan

Th. W.

Mike Croy

Paul Calman

John Thune

Jan E. Riel

Bob Carey, Jr.

Jeff Sessions

ACSA

Patty Murray

Olympic Snowy

Mark Begich

Mark R. Warner

Richard Shelby

Jeffrey S. Merkley

Jon Tester

Lee Meriwether

Coincidentally

My Barnes

Don Vitter

Jeane Stakes

George V. Voinovich



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 09 2010

OFFICE OF  
AIR AND RADIATION

The Honorable Mark Begich  
United States Senate  
Washington, D.C. 20515

Dear Senator Begich:

Thank you for your July 2, 2010, letter to Administrator Jackson raising concerns regarding the treatment of biomass combustion emissions in the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule (the "Tailoring Rule"). At her request, I am writing to respond.

I would like to address your comments about the treatment of biomass combustion emissions in the final Tailoring Rule and to assure you that we plan to further consider how the PSD and Title V permitting programs apply to these emissions.

As you noted, the final Tailoring Rule does not exclude biomass-derived carbon dioxide emissions from the calculations for determining PSD and Title V applicability for GHGs. To clarify a point made in your letter, the proposed Tailoring Rule also did not propose to exclude biomass emissions from the calculations for determining PSD and Title V applicability for GHGs. The proposed Tailoring Rule pointed to EPA's Inventory of Greenhouse Gas Emissions and Sinks for guidance on how to estimate a source's GHG emissions on a CO<sub>2</sub>-equivalent basis using global warming potential (GWP) values<sup>1</sup>. This narrow reference to the use of GWP values for estimating GHG emissions was provided to offer consistent guidance on how to calculate these emissions and not as an indication, direct or implied, that biomass emissions would be excluded from permitting applicability merely by association with the national inventory.

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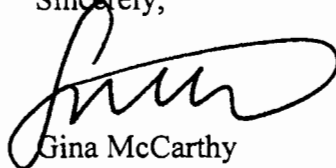
<sup>1</sup> See 74 FR 55351, under the definition for 'carbon dioxide equivalent'.



The fact that in the Tailoring Rule EPA did not take final action one way or another concerning such an exclusion does not mean that EPA has decided that there is no basis for treating biomass CO<sub>2</sub> emissions differently from fossil fuel CO<sub>2</sub> emissions under the Clean Air Act's PSD and Title V programs. The Agency is committed to working with stakeholders to examine appropriate ways to treat biomass combustion emissions, and to assess the associated impacts on the development of policies and programs that recognize the potential for biomass to reduce overall GHG emissions and enhance U.S. energy security. Accordingly, today we issued a Call for Information<sup>2</sup> asking for stakeholder input on approaches to addressing GHG emissions from bioenergy and other biogenic sources, and the underlying science that should inform these approaches. Taking into account stakeholder feedback, we will examine how we might address such emissions under the PSD and Title V programs. We will move expeditiously on this topic over the next several months. As we do so, we will continue to work with key stakeholders and partners, including the U.S. Department of Agriculture, whose offices bring recognized expertise and critical perspectives to the issues at hand.

Thank you again for your continued interest in this issue. If you have any questions, please contact me, or your staff may contact Cheryl Mackay in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina McCarthy', with a large, sweeping flourish at the end.

Gina McCarthy  
Assistant Administrator

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<sup>2</sup> Posted online at [http://www.epa.gov/climatechange/emissions/biogenic\\_emissions.html](http://www.epa.gov/climatechange/emissions/biogenic_emissions.html)